PCIA *Personal Communications Industry Association*

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December 1, 1997

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, NW Room 200
Washington, DC 20554

RE: *Ex parte* notification

- *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS (Gen Docket No. 90-314 / ET Docket No. 92-100)*
- *Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Narrowband PCS (PP Docket No 93-253)*

Dear Ms. Salas:

Over the past week PCIA has scheduled and/or conducted meetings with the offices of:

- Chairman William Kennard (November 26, 1997)
- Commissioner Harold Furchtgott-Roth (November 26, 1997)
- Commissioner Susan Ness (November 24, 1997)
- Commissioner Michael Powell (November 26, 1997)
- Commissioner Gloria Tristani (December 2, 1997)

The intent of these meetings was to brief the Commissioners about PCIA and its advocacy agenda for the next six months. As part of those briefings, PCIA staff has circulated a reference book describing PCIA and outlining some of the major issues affecting PCIA members to the Commissioners and their wireless advisors. The above-referenced dockets are among the issues outlined in the reference book.

Pursuant to §1.1206(b) of the Commission's rules, two copies of this letter and the briefing book are hereby filed with the Secretary's office. Please place a copy of this book in the dockets referenced above.

Kindly refer questions in connection with this matter to me at 703-739-0300.

Respectfully submitted,

Robert L. Hoggarth

Robert L. Hoggarth, Esq.
Senior Vice President, Paging & Narrowband

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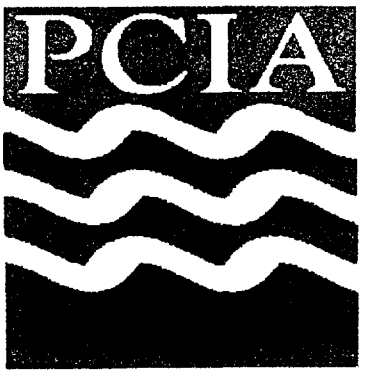
• 500 Montgomery Street • Suite 700 • Alexandria, VA 22314-1561 •
• **Tel:** 703-739-0300 • **Fax:** 703-836-1608 • **Web Address:** http://www.pcia.com •



Personal
Communications
Industry
Association

ISSUE: Broadband PCS Forbearance

WHY IT'S IMPORTANT:

Vestiges of economic regulation, designed for a monopoly wireline telecommunications environment, remain in the rules governing wireless services. These outdated and obsolete provisions create often subtle but costly barriers to consumers realizing the full benefits of the competitive wireless marketplace.

WHAT PCIA IS SEEKING:

PCIA seeks Commission action under the authority granted in Section 10 of the Telecommunications Act of 1996 to forbear from regulation where rules are no longer necessary to protect consumers or the public interest. Specifically, PCIA has asked for elimination of regulatory involvement in private resale agreements, Section 226 (TOCSIA) obligations, prior approval for *pro forma* assignments and transfers of control, and other provisions.

BACKGROUND:

New Section 10 of the *Telecommunications Act of 1996* gives the FCC the authority (and obligation) to forbear from regulation where such rules are no longer necessary to protect consumers or the public interest. Forbearance authority empowers the Commission to ensure that a static statute can be appropriately updated to reflect changing conditions in the telecommunications marketplace.

Marketplace competition does a better job of promoting consumer interests than perpetuating well intended but obsolete and costly regulatory intrusions (or the threat of regulatory intrusion) into the marketplace. The PCS experience has shown that, in fact, not just in theory, competition rather than regulation best serves the interest of the American consumer.

PCIA POSITIONS:

1. The time has come to eliminate the last vestiges of outmoded economic regulation of PCS.

2. Specific forbearance sought for:

   A) *Section 201:* Requires carriers to provide service upon reasonable request and imposes a general requirement that rates, terms and conditions be just and reasonable.

B) *Section 202:* Imposes an obligation on carriers to avoid rates, terms and conditions that are unjustly or unreasonably discriminatory.

C) *Mandatory Resale:* Commission rules prohibit CMRS carriers from restricting resale.

D) *Section 226 (Telephone Operator Consumer Services Improvement Act (TOCSIA)*): Imposes various information, disclosure and operating requirements on operator service providers and aggregators.

E) *International Section 214:* Mandates that carriers obtain prior FCC approval to operate international facilities and comply with international tariffing requirements.

F: *Section 310(d)*: Requires prior approval for *pro forma* assignments and transfers of control.

3. PCIA's petition and the comments filed demonstrate that the three-pronged test in Section 10 have been met for all these provisions and forbearance is warranted.

CURRENT STATUS:

Petition filed May 22, 1997. Comments filed July 2, 1997. Replies filed July 17, 1997. Awaiting Commission action.

PCIA CONTACT: Mark Golden

ISSUE: LEC-CMRS Interconnection

WHY IT'S IMPORTANT:

Fair, equitable and enforceable interconnection policies and rules are critical to the competitive telecommunications marketplace embraced by the Telecommunications Act of 1996. Wireless carriers have yet to achieve the co-carrier status to which they are entitled because local exchange carriers are resisting such change, and because the FCC to date has been reluctant to clarify and enforce its rules. With strong follow-up, the wireless industry (the only segment of the telecommunications marketplace that has caused prices to drop since passage of the act) will become a true catalyst for telecommunications competition.

WHAT PCIA IS SEEKING:

The FCC must act quickly and clearly enunciate and demonstrate the steps it is willing to take to enforce interconnection policies in place since the early 1980s. The Commission must resolve the reconsideration of its recent interconnection orders, clarify its existing rules and create mechanisms to encourage LECs to meet their obligations under the Act.

BACKGROUND:

The Telecommunications Act of 1996 set forth additional rights and obligations, or reaffirmed or extended existing rights and obligations, with respect to, among other things: (1) interconnection between LECs and other telecommunications carriers; and (2) numbering administration. In view of the potentially broad scope of issues governed by the act, the FCC initiated a rulemaking to define the rights and obligations and to govern relationships among carriers, including CMRS providers, on these issues. The FCC adopted these rules in its orders on interconnection, released Aug. 8, 1996.

PCIA POSITIONS:

1. The FCC must act swiftly and decisively to protect and promote the interconnection rights of CMRS carriers. No particular class of CMRS providers should be placed at a competitive disadvantage with respect to interconnection. All CMRS carriers, including paging providers, are telecommunications carriers under the Act. In addition, CMRS providers are entitled to relief from charges historically imposed by LECs in interconnection arrangements.

2. The Commission should ensure that numbering relief is industry-neutral.

3. The FCC and the numbering administrator, should proceed with reforming numbering charges as outlined in the Commission's *Second Report and Order*.

CURRENT STATUS:

1. **At the FCC:**
Petitions for reconsideration remain pending before the FCC with respect to both interconnection orders. In addition, a request filed by Southwestern Bell Telephone, Inc. requesting clarification of the interconnection rules between LECs and paging providers remains pending. Lastly, the Commission has indicated that it will soon initiate an additional proceeding to address LEC-CMRS interconnection issues that remain outstanding.

2. **In the Eighth Circuit Court:**
Appeals that had been filed with the Eighth Circuit Court were addressed in opinions issued July 18, 1997, and Aug. 22, 1997. Petitions for rehearing have since been filed.

PCIA CONTACTS: Rob Hoggarth
Mark Golden
Angela Giancarlo

ISSUE: Universal Service

WHY IT'S IMPORTANT:

Affordable telecommunications service should be available to all U.S. citizens. Telecommunications carriers have an obligation to contribute to universal service funds in an equitable and non-discriminatory fashion, but the funds of universal service should not unfairly impact legitimate carriers. The present system proposed by the FCC discriminates against new personal communications services providers and existing paging carriers. This discrimination damages the ability of these new services to develop into true wireless competitors, and threatens to damage a robustly competitive paging industry at the expense of carriers offering similar services.

WHAT PCIA IS SEEKING:

The Commission must reconsider its existing rules and modify the contributions of wireless carriers that are now required to contribute to the universal service fund, but are ineligible to withdraw from the fund. Furthermore, the FCC should recognize the significant public policy benefits of a healthy new class of competitive providers and grant limited five-year exemptions to new carriers employing exciting new PCS technologies.

BACKGROUND:

The Telecommunications Act of 1996 mandated that the Commission thoroughly review the existing system of federal mechanisms supporting universal service. On May 8, 1997, the Commission released its *Report and Order* on universal service. This order outlined the Commission's plan to oversee the establishment of: (1) A $2.5 billion annual fund, available Jan. 1, 1998, for use by schools, libraries and rural health care providers; and (2) A $4.6 billion annual fund, available Jan. 1, 1999, which is intended to cover traditional universal service needs and replace the current system of implicit subsidies.

PCIA POSITIONS:

1. Paging companies' contribution to the universal service fund (USF) should be based on no more than 50% of their revenues.

2. The FCC should claim broad jurisdiction on universal service issues and decisions that affect CMRS carriers.

3. The FCC should provide the wireless industry with greater representation on the Universal Service Administrative Company (USAC) board of directors.

4. The FCC should clarify its Form 457 (Universal Service Worksheet) to facilitate CMRS carriers' compliance with the Commission's rules and to bring some comparability and equity to the USF collection and allocation processes.

CURRENT STATUS:

1. **At the FCC:**
   Petitions for reconsideration remain pending before the FCC.

2. **In the Fifth Circuit Court:**
   Several federal court appeals have been filed and have been consolidated in the Fifth Circuit Court. No timetable has been established for these proceedings.

PCIA CONTACTS: Rob Hoggarth
Mark Golden
Angela Giancarlo

ISSUE: **Tower Siting and Facility Management Issues - Zoning Moratoria and Local Impediments to Entry**

WHY IT'S IMPORTANT:

Moratoria on the approval or construction of towers or facilities for providing wireless communications services enacted by local governments and other locally imposed impediments, such as overly restrictive zoning ordinances, are delaying the introduction of new services and new competition. These types of locally-initiated actions are threatening to affect the costs and availability of wireless telecommunications services to consumers and businesses. New PCS licensees paid substantial sums of money to the federal government in auction fees for their licenses. Obstacles to buildout are particularly damaging to these carriers, effectively blocking their entry into the market and undermining their ability to compete both with incumbent wireless services and wireline local exchange carriers.

WHAT PCIA IS SEEKING:

FCC pre-emption of market entry barriers that meet specific established criteria including: any moratoria or extension exceeding three months in duration; any failure to issue a written opinion on a zoning decision within a three month period; any action to deny permitting or access on the basis of licensee characteristics (e.g., financial, legal or ownership qualifications); any action that prohibits or unduly restricts the installation of facilities on existing structures; and any action that directly or indirectly discriminates against new providers of wireless services.

Implementation of specific mechanisms for addressing complaints that states or localities have inappropriately interfered with federal jurisdiction to regulate issues of environmental effects of radio frequency emissions.

BACKGROUND:

With the passage of Section 704 of the Telecommunications Act, Congress limited the authority of localities to regulate the placement or construction of personal wireless facilities and left the resolution of disputes related to "land use" and zoning decisions to the courts. Newly licensed providers of new and advanced wireless services (who have paid and committed substantial sums of capital to the federal government for their licenses) are constructing the networks and infrastructure necessary to provide service to consumers and businesses, and to compete with incumbent wireless and wireline telecommunications carriers.

Companies that are new entrants to the wireless marketplace are facing significant obstacles in the form of local zoning moratoria (enacted by local governments that prevent all

development of needed structures and facilities) and other locally imposed impediments (such as overly restrictive zoning ordinances that preclude the development of a wireless network) to market entry.

PCIA POSITION:

To the extent that "broad" and "sweeping" actions of local governments preclude a licensed provider of a telecommunications service from entering or operating in all or a portion of its licensed market area, such an action constitutes the imposition of a "barrier to entry," as well as regulation (by the locality) of the market "entry" of a commercial mobile radio service (CMRS) provider.

Such actions are forbidden in Section 253(a) and 332(c)(3) of the Communications Act. Section 253(d) gives the FCC specific authority to pre-empt state and local statutes to the extent necessary to correct any violation of Section 253(a).

CURRENT STATUS:

In *DA 96-2140/ FCC 97-264*, FCC has preliminarily concluded certain zoning moratoria are local actions that can prohibit the ability of an entity to provide telecommunications services.

PCIA CONTACTS: Mark Golden
Rob Hoggarth
Sheldon Moss

ISSUE: **Tower Siting and Facility Management Issues - FCC Environmental Rules for Radio Frequency (RF) Exposure**

WHY IT'S IMPORTANT:

Under the National Environmental Policy Act of 1969 (NEPA), all federal agencies are responsible for the environmental impacts of the products or services they regulate. As such, providers of wireless telecommunications services are charged with assuring that any human exposure to "non ionizing" radio fields (from FCC-licensed services) do not have harmful biological and physiological effects on workers who come into contact or close proximity to wireless telecommunications devices or equipment or members of the general public. In 1996, the FCC adopted more stringent human exposure standards and compliance regulations for radio frequency (RF) emissions to provide greater assurance for public and workplace safety.

WHAT PCIA IS SEEKING:

PCIA seeks to continue working closely with the FCC (and the public health agencies that have participated in the development of the RF standards that FCC adopted) to make sure that effective, yet practical, regulatory and administrative mechanisms are in place for ensuring industry compliance with the new RF exposure guidelines.

PCIA is monitoring the transition process for existing transmitter facilities (the process where facilities are to be in compliance at time of renewal or major modification) to make sure that the "rolling" transition timelines will not place the FCC licenses of any carriers making legitimate attempts to ensure their facilities are in compliance in jeopardy.

BACKGROUND:

Last August, the FCC finalized its regulations for evaluating the effects of radio frequency (RF) emissions and its guidelines for human exposure to RF electromagnetic fields.

In enacting the new rules and exposure guidelines, the FCC, after lengthy consultation with all the federal public health agencies (FDA, EPA, NIOSH, etc.), adopted the most conservative findings of two of the most distinguished scientific organizations with long-standing expertise in this area, the National Council on Radiation Protection (NCRP) and the Institute of Electrical and Electronic Engineers (IEEE).

FCC provided substantial guidance to the industry regarding implementation of the new guidelines in a revised version of *OET Bulletin No. 65*.

PCIA POSITION:

There are still technical or procedural issues that require additional clarification. PCIA recently hosted an expert working meeting where industry representatives met with FCC and OSHA officials to address the primary points of confusion. Following this important meeting, PCIA identified its primary near-term objectives:

1. ***Provide needed practical compliance guidance to the industry.*** This is particularly important because of the significant number of collocated sites where carriers will have to share the responsibility for site-wide compliance. PCIA believes that everyone will benefit if all licensees, as well as building owners and facility managers, are informed about proper compliance procedures and expectations.

2. *Publicly demonstrate the wireless industry's commitment to protect public and workplace safety.*

3. *Address critical FCC and OSHA compliance considerations with a prototype of a model antenna site safety and health program.*

CURRENT STATUS:

PCIA is continuing its work with the FCC and the industry to facilitate compliance with the new FCC RF exposure regulations by wireless service providers and operators.

PCIA CONTACTS: Mark Golden
Rob Hoggarth
Sheldon Moss

ISSUE: **Tower Siting and Facility Management Issues - Local Regulation of RF Emissions**

WHY IT'S IMPORTANT:

Congress has recognized the critical importance of a single, federally-originated process for environmental and safety regulation of FC licensed wireless services. Further, the allowance of individual states and localities to develop and adopt their own "standards" would stymie the development of affordable wireless services.

With regard to the development and construction of wireless communications networks as well as their ongoing operation, increasing numbers of local governments are attempting to directly or indirectly base zoning and land-use decision concerning wireless facilities on environmental effects of RF emissions -- in blatant violation of the 1996 Telecommunications Act.

WHAT PCIA IS SEEKING:

Implementation of specific mechanisms for addressing complaints that states or localities have inappropriately interfered with federal jurisdiction to regulate issues of environmental effects of radio frequency emissions.

BACKGROUND:

In a *Notice of Proposed Rule Making* (RM-8577) initiated partly at the behest of PCIA, the FCC sought comment on what state and local governments should be permitted to require from providers of personal wireless services for demonstrating that their transmitter facilities comply with the FCC radio frequency exposure regulations. Local regulation of environmental effects was forbidden by Congress in the 1996 Telecommunications Act.

Last March, PCIA lobbied the FCC to take decisive action when state or local governments stymie network development efforts through levying administrative or reporting obligations predicated on some degree of local regulation of health and safety considerations of transmitter facilities.

PCIA POSITION:

PCIA has shown that state and local governments have been increasingly effective in using the guise of protecting public safety to constrain the efforts of the wireless industry to deploy a nationwide infrastructure by regulating environmental effects of RF emissions.

Such actions have included the denial of siting applications after emotionally charged

testimony about possible health threats have been presented at zoning hearings.

Additionally, local jurisdictions are fostering burdensome, unnecessary and illegal obligations on wireless carriers and facility operators to prove their transmitter sites comply with the federal human exposure guidelines for RF emissions.

PCIA is concerned that more localities will attempt to require carriers to expend considerable and unnecessary resources to document compliance in an area of law that has been federalized by statute, and that more localities will attempt to exert control over the siting of wireless facilities through directly or indirectly regulating environmental effects of RF energy.

CURRENT STATUS:

Comments and replies have been filed on the NPRM.

PCIA CONTACTS: Mark Golden
Rob Hoggarth
Sheldon Moss

ISSUE: Numbering Administration - NXX Exhaust

WHY IT'S IMPORTANT:

Numbering resources are a critical element in any telecommunications system. As a result of competition and outdated methods of number assignments, consumers are constantly facing the issue of number exhaust, implementation of new NPAs (number plan areas or area codes), and delays in initiating new services.

WHAT PCIA IS SEEKING:

Strong leadership and oversight by the FCC to ensure that number assignment and numbering relief procedures are implemented in a technology neutral and competitively neutral fashion, and that limited numbering resources are efficiently utilized.

BACKGROUND:

As a result of competition and outdated methods of number assignment methods, the industry is constantly facing the issue of number exhaust, which results in the constant addition of NPA's (number plan areas) or area codes. (Background-New NPAs activated in 1995-14, 1996-20 and 1997-42) Today's regulatory and incumbent environment requires that a new service provider be assigned an entire NXX (10,000 numbers) per rate center to provide service to customers in each rate center, irrespective of the number of customers. As a result, a wireline service provider may be assigned 10,000 numbers for 10 customers. However, this is not necessarily the same for wireless service providers. Wireless is not required to match each rate center one for one and therefore is able to spread the customer base out over a larger area, resulting in higher number utilization.

PCIA POSITION:

1. PCIA supports the industry work currently underway to modify current assignment processes and to consolidate rate centers in an attempt to alleviate the NXX exhaust issue.

2. There are several issues involved with modifying the assignment process. For example, wireless currently cannot be assigned numbers in blocks of less than 10,000 because of roaming and fraud issues.

3. There is industry agreement that until these technical issues can be resolved, wireless will continue to be assigned numbers in blocks of 10,000.

CURRENT STATUS:

The industry is working through various fora, both national and state, to address NXX exhaust. A report recently was submitted to the FCC by the North American Numbering Council (NANC) documenting the work of the Carrier Liaison Committee (CLC) Ad Hoc Committee on NXX exhaust.

PCIA CONTACTS: Mark Golden
Rob Hoggarth
Cathy Handley

ISSUE: Numbering Administration: NANPA Administration

WHY IT'S IMPORTANT:

Numbering resources are a critical element in any telecommunications system. As a result of competition and outdated methods of number assignments, consumers are constantly facing the issue of number exhaust, implementation of new NPAs (number plan areas or area codes), and delays in initiating new services.

WHAT PCIA IS SEEKING:

Strong leadership and oversight by the FCC to ensure that number assignment and numbering relief procedures are implemented in a technology-neutral and competitively neutral fashion, and that limited numbering resources are efficiently utilized.

BACKGROUND:

A working group was appointed in 1996 by the North American Numbering Council (NANC) to evaluate and recommend a new North American Numbering Plan (NANP) Administrator. The recommendation went to the NANC in May, 1997 for Mitretek, with Lockheed Martin as the alternate. The NANC overturned this recommendation, recommending Lockheed Martin as the primary choice with Mitretek as the alternate. PCIA's initial preference was for Mitretek, however after working with Lockheed Martin to address the wireless community's specific concerns, PCIA modified its initial preference and supported the NANC recommendation of Lockheed Martin.

PCIA POSITION:

PCIA supports the choice of Lockheed Martin as the North American Numbering Plan Administrator.

CURRENT STATUS:

Lockheed Martin was appointed the NANP administrator by the FCC Oct. 13, 1997, and NECA was appointed to manage billing and collection.

PCIA CONTACTS: Mark Golden
Rob Hoggarth
Cathy Handley

ISSUE: Numbering Administration: Number Pooling Policies

WHY IT'S IMPORTANT:

Numbering resources are a critical element in any telecommunications system. As a result of competition and outdated methods of number assignments, consumers are constantly facing the issue of number exhaust, implementation of new NPAs (number plan areas or area codes), and delays in initiating new services.

WHAT PCIA IS SEEKING:

Strong leadership and oversight by the FCC to ensure that number assignment and numbering relief procedures are implemented in a technology neutral and competitively neutral fashion, and that limited numbering resources are efficiently utilized.

BACKGROUND:

Today's regulatory and incumbent environment requires that a new service provider be assigned an entire NXX (10,000 numbers) per rate center to provide service to customers in each rate center, irrespective of the number of customers. The North American Numbering Council (NANC) has requested that the industry review several alternatives and develop guidelines regarding number pooling. It is believed that number pooling provides for a more efficient use of numbers because it would allow companies to share numbers within an NXX. This work is underway within the Industry Numbering Committee (INC) as the focal point for information. An initial report was submitted to the NANC Oct. 17, 1997. A premise for this report and all of the methods being evaluated is that the location routing number (LRN) capability associated with local number portability is required to participate in the number pools. Since the wireless industry is not required to be fully capable of number portability until June, 1999, it will not be capable of participating in pooling until such time.

PCIA POSITION:

1. PCIA is very active in all functions associated with number pooling. PCIA believes it is extremely important that the association assist in the evaluation of the alternatives and the development of the guidelines.

2. States should not implement number pooling until such time as all parties can participate equally.

3. In the event that a state chooses to implement pooling, those entities that are not LRN capable must not in any way be hampered from acquiring numbers.

CURRENT STATUS:

A draft report regarding number pooling within the rate center was recently presented to the NANC.

PCIA CONTACTS: Mark Golden
Cathy Handley

ISSUE: Number Portability

WHY IT'S IMPORTANT:

A recent Gallup Poll found that 80% of residential consumers and 90% of business users would not switch telephone carriers if they had to surrender their current telephone number to do so. Number portability is an important aspect of competition between CMRS providers and between wireless and wireline competitors. In addition, number portability capabilities may be necessary to have access to numbering resources under certain conditions.

WHAT PCIA IS SEEKING:

Implementation of long-term number portability solutions in a manner that reflects the unique technical, operational and development circumstances of new broadband PCS licensees.

BACKGROUND:

Number portability was ordered for CMRS and covered SMR by the FCC to encourage local competition The ability to route subscribers in a portability environment is the first step that must be available by December 1998, with full number portability required by June 30, 1999.

PCIA POSITION:

PCIA supports number portability for broadband PCS and views it as the first step to true competition in the telecommunications market place. PCIA is working with its members and the industry in establishing the technical and system requirements necessary for number portability.

CURRENT STATUS:

Various industry standards bodies are addressing the technical standards required for switch development to provide number portability.

PCIA CONTACTS: Mark Golden
Cathy Handley

ISSUE: Pay Telephone Compensation

WHY IT'S IMPORTANT:

Pay telephone compensation rules recently promulgated by the Commission will place significant and unintended burdens on the paging industry by significantly increasing costs and by causing carriers to limit the availability of telecommunication services from pay phones. Although PCIA acknowledges the benefits of a competitive pay telephone industry, and acknowledges the value of ensuring some compensation for PSPs, the complicated system created by the departing Commission does not achieve its intended effects in a fair and sensible manner. The ostensible "markets" established by the FCC are not economically viable.

WHAT PCIA IS SEEKING:

The Commission must reconsider its rules because the foundation of its "carrier pays" approach is undermined by the absence of viable blocking technologies. The Commission must stay the effectiveness of its existing rules and reconsider an approach that permits pay phone providers to set the appropriate rate of compensation at the phones and advise consumers accordingly.

BACKGROUND:

The Commission released an *Order* that required a per-call compensation scheme to be paid to Pay Phone Service Providers (PSP). These rates were generated by complaints that the PSPs were not receiving compensation for calls to toll free numbers. Because toll free numbers are essential to CMRS providers, PCIA filed an appeal of the Commission's decision to the D.C. Circuit Court of Appeals. The D.C. Circuit Court of Appeals *remanded* the decision back to the Commission.

PCIA POSITIONS:

PCIA raised two fundamental challenges to the rules that the Commission adopted:

1. The Commission's per-call compensation scheme is arbitrary and capricious. Based on the Commission's definition of "fair compensation" as the "market-based" rate of a local coin call. The decision to use a market-based rate is completely undermined by the Commission's acknowledgment that there currently is no competitive market in the pay phone industry, and that competitive conditions are a prerequisite to a market-based approach to pay phone compensation.

2. The Commission acted arbitrarily and capriciously by adopting a carrier-pays system

whereby the IXCs pay for the calls and pass the cost on to the messaging companies. The evidence before the Commission establishes that it should have adopted a caller-pays system. Indeed, a competitive "market-based" rate cannot emerge unless the caller incurs the compensation charge; only the caller can spur competition in the pay phone industry by exercising the power to choose the pay phone with the lowest price. Furthermore, a caller-pays system is significantly less burdensome and less costly than the FCC's carrier-pays approach, which saddles IXCs and LECs with numerous new tracking and reporting obligations.

CURRENT STATUS:

Despite direction from the D.C. Circuit Court of Appeals, intense lobbying efforts by PCIA staff and members, and clear record evidence to the contrary, the Commission released a *Revised Order* on Oct. 9, 1997. This *Order* establishes a new per-call compensation rate for pay phone calls of 28.4 cents per call (a 6.6 cent reduction of the previous rate struck down by the court). PCIA and several individual members are continuing an aggressive and practical approach to the pay phone compensation battle. PCIA also is exploring diplomatic options with both the IXCs and PSPs to resolve this matter.

PCIA CONTACTS: Rob Hoggarth
Eddie Gleason

ISSUE: Calling Party Pays

WHY IT'S IMPORTANT:

Calling party pays (CPP) is the model for billing nearly every telecommunications service except wireless services in the United States. The called party pays scenario for wireless in the United States has discouraged wireless subscribers from using their wireless telephones to receive calls and impeded development of wireless as a competitive alternative to traditional wireline local exchange services.

WHAT PCIA IS SEEKING:

PCIA argues that the FCC should make a public policy finding that the uniform availability of a calling party pays option is in the public interest; should establish a solid record to sustain federal jurisdiction for resolving any regulatory disputes; and act as a catalyst to successful introduction of calling party pays by helping to overcome the regulatory and technical inertia that has impeded the development of CPP solutions in the United States.

BACKGROUND:

Calling party pays (CPP) is the model for billing nearly every telecommunications service. In the United States, however, the wireless subscriber generally pays for calls initiated to their wireless device. This has discouraged wireless subscribers from using their phones to receive calls.

Calling party pays for wireless phone service has been implemented throughout Europe (in the Czech Republic, Germany, Hungary, Italy, Portugal, Sweden and the United Kingdom) and throughout Latin America (including Columbia and Venezuela) and in Israel and Lebanon. International experience demonstrates that consumers benefit from calling party pays through better control of their telecommunications costs and higher usage by consumers. In particular, traffic between wireless and wired networks is more evenly balanced.

Impediments to implementation of CPP have been primarily concerns by LECs over "leakage" of revenue (Leakage occurs when a call is initiated from a coin telephone, hotel or motel telephone, and in other situations in which the charges cannot be traced back to or collected from the party originating the call) and concern, particularly from state regulators, that consumers be aware when they are incurring charges when placing calls to wireless telephones.

PCIA POSITIONS

1. PCIA believes that implementation of a uniform, nationwide mechanism for CPP would significantly increase domestic wireless telephone usage, and could be a key factor in making wireless a competitive alternative to traditional, wireline local exchange service.

2. PCIA argues that the FCC could act as an important catalyst to the successful introduction of CPP by helping to overcome the regulatory and technical "inertia" that has impeded development of CPP solutions in the United States.

3. In addition, PCIA argues, that a *Notice of Inquiry* would allow the FCC to collect a solid record of information from all affected parties (local exchange carriers, equipment manufacturers, wireless providers and consumers) to ensure successful implementation of CPP.

4. PCIA also believes the *Inquiry* will serve the important purpose of creating a record for decisions on the appropriate jurisdiction for CPP. (Based on the 8th Circuit Court's recent affirmation of the FCC's authority over CMRS and CMRS interconnection, PCIA believes the FCC has jurisdiction in this matter.)

CURRENT STATUS:

The Commission adopted a *Notice of Inquiry* into CPP Sept. 25, 1997. Text was released Oct. 23, and comments are due Dec. 1.

PCIA CONTACTS: Mark Golden
Rob Hoggarth

ISSUE: CMRS Resale

WHY IT'S IMPORTANT:

In a competitive multi-carrier environment, regulatory intervention is not needed to promote resale. Paging resale has flourished in a market place in which there has never been mandatory resale. Carrier-reseller relationships cannot be mandated by regulatory fiat because they are business relationships. Resellers that add value as part of the sales and distribution chain do not need the FCC's protection; those that do not add value will ultimately fail regardless of government attempts to protect them. Continuation of mandatory resale requirements creates significant costs for PCS providers and consumers.

WHAT PCIA IS SEEKING:

Acceleration of the elimination (sunset) of mandatory resale obligations for PCS.

BACKGROUND:

Resale obligations have historically been imposed as an artificial mechanism for increasing (or creating) competition in highly concentrated market segments and for preventing unreasonable discrimination by dominant carriers. The resale obligations now imposed on PCS providers were created in a wireline context to exert pressure on monopoly telephone operators to offer more competitive rates.

The level of competition that currently exists in the CMRS marketplace is much greater than that in any other telecommunications segment where a federal resale requirement has been imposed.

Resellers have emerged as successful market participants in the paging industry without federal regulatory intervention. (Paging has never faced a mandatory resale obligation.) It is estimated that the largest paging carriers use resellers for approximately two-thirds of their customer activations and that, on average, resellers account for approximately thirty percent of the paging market.

The mandatory resale obligation on PCS is scheduled to terminate ("sunset") in 2002.

PCIA POSITIONS

1. Carrier-Reseller relationships cannot be mandated by regulatory fiat because they are a business relationship. Resellers that add value as a part of the sales and distribution chain do not need the FCC's protection; those that do not add value will ultimately